

## Farm Service Agency, USDA

## § 701.4

Agreement with another party to provide technical assistance. If this limitation results in significant hardship to producers in a county the State committee may request in writing that the Deputy Administrator waive this requirement for that county.

(j) The provisions in this part shall not create an entitlement in any person to any ECP cost share or claim or any particular notice or form or procedure.

(k) Additional terms and conditions may be set forth in the application or the forms participants will be required to sign for participation in the ECP.

### § 701.2 Definitions.

(a) The terms defined in part 718 of this chapter shall be applicable to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions shall apply to this part:

*Agricultural producer* means an owner, operator, or tenant of a farm or ranch used to produce for food or fiber, crops (including but not limited to, grain or row crops; seed crops; vegetables or fruits; hay forage or pasture; orchards or vineyards; flowers or bulbs; or field grown ornamentals) or livestock (including but not limited to, dairy or beef cattle; poultry; swine; sheep or goats; fish or other animals raised by aquaculture; other livestock or fowl) for commercial production. Producers of animals raised for recreational uses only are not considered agricultural producers.

*Annual agricultural production* means production of crops for food or fiber in a commercial operation that occurs on an annual basis under normal conditions.

*Applicant* means a person who has submitted to FSA a request to participate in the ECP.

*Cost-share payment* means the payment made by FSA to assist a program participant under this part to establish practices required to address qualifying damage suffered in connection with a qualifying disaster.

*Deputy Administrator* means the Deputy Administrator for Farm Programs, FSA, the ECP Program Manager, or designee.

*Farmland* means land devoted to agricultural production, including land used for aquaculture, or other land as may be determined by the Deputy Administrator.

*Program year* means the applicable Federal fiscal year.

### § 701.3 Scope.

(a) FSA will provide cost-share assistance to farmers and ranchers to rehabilitate farmland damaged by wind erosion, floods, hurricanes, or other natural disasters as determined by the Deputy Administrator, and to carry out emergency water conservation measures during periods of severe drought.

(b) The objective of the ECP is to make cost-share assistance available to eligible participants on eligible land for certain practices, to rehabilitate farmland damaged by floods, hurricanes, wind erosion, or other natural disasters, and for the installation of water conservation measures during periods of severe drought.

(c) Payments may also be made under this part for:

(1) Emergency water conservation or water enhancement measures (including measures to assist confined livestock) during periods of severe drought; and

(2) Floodplain easements for runoff and other emergency measures that the Deputy Administrator determines is necessary to safeguard life and property from floods, drought, and the products of erosion on any watershed whenever fire, flood, or other natural occurrence is causing or has caused, a sudden impairment of the watershed.

(d) Payments under this part are subject to the availability of appropriated funds and any limitations that may otherwise be provided for by Congress.

### § 701.4 Producer eligibility.

(a) To be eligible to participate in the ECP the Deputy Administrator must determine that a person is an agricultural producer with an interest in the land affected by the natural disaster, and that person must be liable for or have paid the expense that is the subject of the cost share. The applicant must be a landowner or user in the

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area where the qualifying event has occurred, and must be a party who will incur the expense that is the subject of the cost share.

(b) Federal agencies and States, including all agencies and political subdivisions of a State, are ineligible to participate in the ECP.

(c) All producer eligibility is subject to the availability of funds and an application may be denied for any reason.

### § 701.5 Land eligibility.

(a) For land to be eligible, the Deputy Administrator must determine that land that is the subject of the cost share:

(1) Will have new conservation problems caused as a result of a natural disaster that, if not treated, would:

(i) Impair or endanger the land;

(ii) Materially affect the productive capacity of the land;

(iii) Represent unusual damage that, except for wind erosion, is not of the type likely to recur frequently in the same area; and

(iv) Be so costly to repair that Federal assistance is or will be required to return the land to productive agricultural use. Conservation problems existing prior to the disaster are not eligible for cost-share assistance.

(2) Be physically located in a county in which the ECP has been implemented; and

(3) Be one of the following:

(i) Land expected to have annual agricultural production,

(ii) A field windbreak or a farmstead shelterbelt on which the ECP practice to be implemented involves removing debris that interferes with normal farming operations on the farm and correcting damage caused by the disaster; or

(iii) A farm access road on which debris interfering with the normal farming operation needs to be removed.

(b) Land is ineligible for cost share if the Deputy Administrator determines that it is, as applicable:

(1) Owned or controlled by the United States;

(2) Owned or controlled by States, including State agencies or other political subdivisions of a State;

(3) Protected by a levee or dike that was not effectively and properly func-

tioning prior to the disaster, or is protected, or intended to be protected, by a levee or dike not built to U.S. Army Corps of Engineers, NRCS, or comparable standards;

(4) Adjacent to water impoundment reservoirs that are subject to inundation when the reservoir is filled to capacity;

(5) Land on which levees or dikes are located;

(6) Subject to frequent damage or susceptible to severe damage according to paragraph (c) of this section;

(7) Subject to flowage or flood easements and inundation when water is released in normal operations;

(8) Between any levee or dike and a stream, river, or body of water, including land between two or more levees or dikes;

(9) Located in an old or new channel of a stream, creek, river or other similar body of water, except that land located within or on the banks of an irrigation canal may be eligible if the Deputy Administrator determines that the canal is not a channel subject to flooding;

(10) In greenhouses or other confined areas, including but not limited to, land in corrals, milking parlors, barn lots, or feeding areas;

(11) Land on which poor farming practices, such as failure to farm on the contour, have materially contributed to damaging the land;

(12) Unless otherwise provided for, not considered to be in annual agricultural production, such as land devoted to stream banks, channels, levees, dikes, native woodland areas, roads, and recreational uses; or

(13) Devoted to trees including, but not limited to, timber production.

(c) To determine the likely frequency of damage and of the susceptibility of the land to severe damage under paragraph (b)(6) of this section, FSA will consider all relevant factors, including, but not limited to, the location of the land, the history of damage to the land, and whether the land was or could have been protected by a functioning levee or dike built to U. S. Army Corps of Engineers, NRCS, or comparable standards. Further, in making such determinations, information may be obtained and used from